

# EXHIBIT A

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: COLUMBIA UNIVERSITY ) CA 04-01592  
PATENT LITIGATION ) Boston, MA  
 ) September 9, 2004  
 )

BEFORE THE HONORABLE MARK L. WOLF  
UNITED STATES DISTRICT JUDGE  
TELEPHONE CONFERENCE

APPEARANCES:

(As previously noted.)

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1 what would you be seeking, damages?

2 MR. WARE: Yes.

3 THE COURT: And what would be -- what makes it  
4 -- I'm not a patent lawyer -- what makes it unlawful to  
5 assert what you claim is an invalid patent?

6 MR. WARE: I think that we would assert both  
7 under the contract that it would be a breach of the  
8 contract to demand payment of royalties on threat of  
9 termination of a license that covers other intellectual  
10 property by asserting an invalid patent.

11 In addition to that, under the federal law,  
12 there is a doctrine of patent misuse that comes into  
13 play. Because what we have seen over the last six months  
14 is a pattern of activity by Columbia in which an invalid  
15 patent was asserted against the entire industry.  
16 Royalties were extracted from many companies, including  
17 one or more of the companies that are involved in this  
18 litigation which, as far as I know, Columbia hasn't  
19 offered to pay back. And threats of termination and then  
20 actual termination occurred. Settlements were extracted,  
21 including from one of our clients.

22 THE COURT: Well, but if somebody has settled,  
23 then they don't have -- I've dismissed their case,  
24 haven't I?

25 MR. WARE: No, I don't say that in the sense of

1 saying that I'm attempting to resurrect their case. I'm  
2 talking about a pattern of misuse of a patent to obtain  
3 financial gain that is -- was improper. And, only now,  
4 after causing everyone to spend boat loads of money to  
5 try to preserve these licenses, Columbia has decided to  
6 change its mind about terminating licenses, evidently,  
7 although we're not even sure about that. But there is  
8 some pretty clear law that supports the proposition that  
9 those fees that were incurred can be recovered as  
10 damages, not merely as fees under these circumstances.

11 So those are the kinds of claims that we would  
12 be supplementing our complaint to assert.

13 THE COURT: Well, you'd have to move for leave  
14 to amend it, and then I'd have to decide if that's  
15 contested and, if it's contested, whether the interests  
16 of justice make it appropriate.

17 MR. WARE: Yes, I was only going to say it would  
18 be -- I think there's a somewhat different standard for  
19 supplementation as opposed to amending to bring to light  
20 facts that occurred after the filing of the original  
21 complaint. But, in any event, yes, that is certainly  
22 true. The existing complaint, however, does have a count  
23 in the complaint asking the court to determine that no  
24 royalties would be owed on the '275 patent because that  
25 patent is invalid.

1 THE COURT: Well, I know, but that essentially  
2 is moot. If the covenant not to sue gives up any right  
3 to sue on the present claims or to recover on the present  
4 claims of the '275 patent, even if they emerge in their  
5 original form in the reissuance, you've won that. I  
6 mean, I just have a question, the idea of whether you  
7 have the license anymore, because I don't know whether  
8 this license for a bundle of intellectual properties in  
9 any way distinguishes this case from the other cases in a  
10 way that would make a difference. But that's why I think  
11 it's important to know whether you've got a license.

12 MR. WARE: Well, right, your Honor, and we still  
13 don't know the answer to that. I would point out that  
14 none of the cases that Columbia has cited were cases that  
15 involved licenses. They were all declaratory judgment  
16 actions by parties who had been, perhaps, threatened with  
17 an infringement suit, but they weren't licensees. So  
18 there are different circumstances here. And even if the  
19 issue of a declaration as to whether royalties are owed  
20 the license agreement on the '275 patent, that would not  
21 remove the basis for a claim to damages for breach of  
22 that contract which, in our view, puts the issue of the  
23 validity of the '275 patent in play, in any case.

24 These are all matters that we hope to be able to  
25 have an opportunity to brief.